

Exhibit

A



C. C. W. 150

Fax Filing Transmittal To
MARGARET G. MONTEMAYOR,
BEXAR COUNTY DISTRICT CLERK
Fax (210) 335-2553



BEXAR COUNTY COURTHOUSE
100 DOLOROSA
SAN ANTONIO TEXAS 78205
Voice (210) 335-2113

REQUEST FOR PROCESS

Cause No.

2009CI06289

Style:

Russell D. Martin

Court:

408th

VS

City of San Antonio

Date:

April 15, 09

CLERK'S DEPT

Request the following process:

- ☒ Citation ☐ Notice ☐ Precept ☐ Temporary Restraining Order
☐ Subpoena ☐ Subpoena Duces Tecum (Describe Duces Tecum on Reverse) ☐ Other (Describe)

Information
for subpoena:

Date:

Time:

Court:

Parties to be served (type or print): City of San Antonio

1. Hon. Leticia M. Vacek, City Clerk of San Antonio

Address: 100 Military Plaza, 2nd Floor

San Antonio, TX 78205

Type* Certified mail

2.

Address:

Type*

3.

Address:

Type*

4.

Address:

Type*

5.

Address:

Type*

*Type: Sheriff; Constable Precinct _____; Private Process Server; Certified Mail; Registered Mail; Out of County;
Out of State; Secretary of State; Commissioner of Insurance.

Name and address of attorney:

JAVIER N. MALDONADO
110 Broadway, Ste. 510, San Antonio, TX 78205

Attorney's Bar No. 00794216

Attorney for: ☒ Plaintiff ☐ Defendant ☐ Other

Thank you for Fax Filing. If you have questions, please call (210) 335-2621

CERTIFIED MAIL #71603901984625363072

"The State of Texas"

NO. 2009-CI-06289

2009CI06289 -S00001

RUSSELL D MARTIN

Plaintiff
vs.

CITY OF SAN ANTONIO

Defendant

(Note: Attached Document May Contain Additional Litigants.)

NOTICE

Citation Directed to: CITY OF SAN ANTONIO- BY SERVING THE HONORABLE
LETICIA M VACEK, CITY CLERK, CITY OF SAN ANTONIO

100 MILITARY PLAZA 2ND FL
SAN ANTONIO TX 78205-2425

IN THE DISTRICT COURT
408th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
APR 20 PM 4:06

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 15th day of April, 2009.
ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16th DAY OF April A.D., 2009.

PLAINTIFF'S ORIGINAL PETITION

JAVIER N MALDONADO

Attorney/PLAINTIFF
address

110 BROADWAY ST 510
SAN ANTONIO, TX 78205-1948



MARGARET G. MONTEMAYOR
District Clerk of Bexar County, Texas
Bexar County Courthouse
San Antonio, Texas 78205

Angela Dominguez Deputy
ANGELA DOMINGUEZ

OFFICER'S RETURN

Came to hand on the 16th day of April, A.D., 2009 at 8:41 o'clock A.M. and
EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the ____ day of _____, A.D.,
_____, by delivering to _____ a true copy of this
citation _____, upon which I endorsed the date of delivery, together
with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION

Cause of failure to execute this _____ is _____.

MARGARET G. MONTEMAYOR
Clerk of the District Courts of
Bexar County, Texas

By _____ Deputy
ANGELA DOMINGUEZ

ORIGINAL
(DK003)



RUSSELL D. MARTIN, 09 APR 15 PM 4:26
Plaintiff, \$

vs.

CITY OF SAN ANTONIO,
Defendant.

PAUL

JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

408th

NOW COMES RUSSELL D. MARTIN, and files this his Original Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

Parties

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2nd Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

Jurisdiction and Venue

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

09/08/2014 4:05 PM

CITY OF SAN ANTONIO
CITY CLERK

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

Facts

6. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

7. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

8. On or about March 18, 2008, Plaintiff reported to his immediate supervisor, Airport Police Lieutenant (Lt.) John Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

9. Such allegation was subsequently forwarded to Lt. Richard Griffin.

11. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

12. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by

Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

13. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

14. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

15. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

16. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

17. On August 6, 2008, Plaintiff appeared before the Advisory Action Board regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

18. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008.

19. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

20. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

21. On November 25, 2008, Plaintiff submitted a response to Defendant's proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

22. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment.

23. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

24. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

25. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the

Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

Unlawful Retaliation

26. Incorporating the paragraphs above, Plaintiff alleges that Defendant retaliated against him in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for his reporting of a violation of law by another public employee to an appropriate law enforcement authority.

Damages

27. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

28. Plaintiff seeks all the remedies and relief authorized by Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses, emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

Exhaustion of Administrative Procedures

29. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

30. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

31. This suit is filed within the 30 days after exhaustion of March 17, 2009.

the date when the appeal procedures were exhausted.


32. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

Prayer for Relief

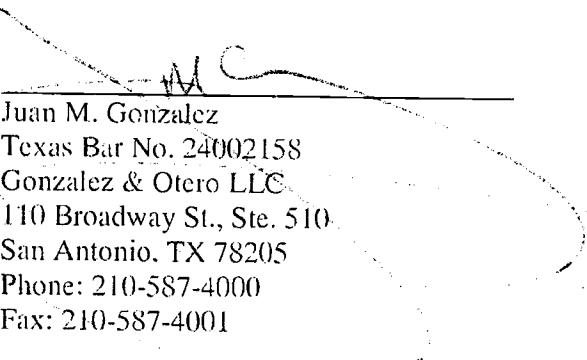
WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted.



JAVIER N. MALDONADO
Texas Bar No. 00794216
110 Broadway St., Ste. 510
San Antonio, Texas 78205
Phone: 210-227-1603
Facsimile: 210-225-3958



Juan M. Gonzalez
Texas Bar No. 24002158
Gonzalez & Otero LLC
110 Broadway St., Ste. 510
San Antonio, TX 78205
Phone: 210-587-4000
Fax: 210-587-4001

ATTORNEYS FOR PLAINTIFF

09 APR 20 PM 4: 06

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK



MARGARET G. MONTEMAYOR
BEXAR COUNTY DISTRICT CLERK
BEXAR COUNTY COURTHOUSE
SAN ANTONIO, TEXAS 78205-3002

RETURN SERVICE REQUESTED

CERTIFIED MAIL



7160 3501 7846 2536 3002
RETURN RECEIPT REQUESTED

049J82013211

\$05.490

04/17/2009

Mailed From 78205

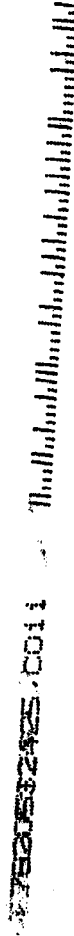
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CITY CLERK ONIO

CITY OF SAN ANTONIO
100 MILITARY PLAZA 2ND FL
SAN ANTONIO, TX 78205-2425

2009C106289 4/18/2009 CITCM ANGELA DOMINGUEZ



RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

No. 2009CT06289
DISTRICT CLERK
BEXAR CO. TEXAS

2009 MAY - § A 10: 29

DEPUTY
§

BY §

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORIGINAL ANSWER OF DEFENDANT
CITY OF SAN ANTONIO

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES Defendant, the CITY OF SAN ANTONIO, in the above entitled and numbered cause. Reserving the right to file other and further pleadings, exceptions, and denials, it files this document as its Original Answer to Plaintiff's Original Petition. In support thereof, it would respectfully show unto the Court as follows:

I.

Defendant, the CITY OF SAN ANTONIO, denies the allegations contained in *Plaintiff's Original Petition* and demands strict proof thereof by a preponderance of the credible evidence.

II.

Defendant, the CITY OF SAN ANTONIO, specifically asserts that it is a home-rule municipality pursuant to its City Charter and the laws of the State of Texas. Defendant, the CITY OF SAN ANTONIO, asserts its entitlement to governmental immunity.

III.

Defendant, the CITY OF SAN ANTONIO, pleads the limitation of liability provided by Tex. Labor Code § 21.258 and § Section 21.2585.

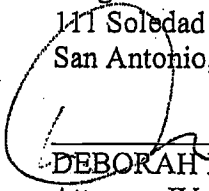
IV.

Defendant the CITY OF SAN ANTONIO specifically asserts that any and all actions taken by Defendant with respect to Plaintiff were based on business necessity.

WHEREFORE, PREMISES CONSIDERED, Defendant, the CITY OF SAN ANTONIO, prays that the Plaintiff take nothing by his lawsuit against it and that Defendant, the CITY OF SAN ANTONIO, go hence with costs without a day.

Respectfully submitted,

CITY OF SAN ANTONIO
Michael D. Bernard, City Attorney
SBN: 02211310
Office of the City Attorney
Litigation Division
111 Soledad St., 10th Floor
San Antonio, TX 78205


~~DEBORAH LYNNE KLEIN~~

Attorney IV
SBN: 11556750
(210) 207-8919 / (210) 207-4357 FAX

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served
on the following on May 8, 2009:

Javier N. Maldonado

Law Office of Javier N. Maldonado, P.C.

110 Broadway St., Suite 510

San Antonio, Texas 78205

☒ CMRRR

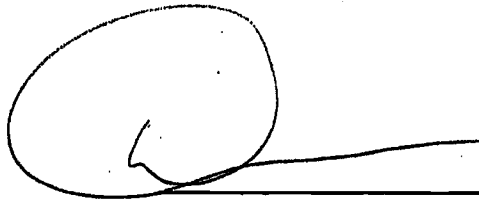
Juan M. Gonzalez

Gonzalez & Otero, LLC

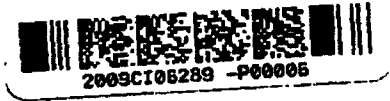
110 Broadway St., Suite 510

San Antonio, Texas 78205

☒ CMRRR

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

DEBORAH LYNNE KLEIN



Cause No. 2009-CI-06289

RUSSELL D. MARTIN,
Plaintiff,

vs.

CITY OF SAN ANTONIO,
Defendant.

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

NOW COMES RUSSELL D. MARTIN, and files this his First Amended Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

Parties

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2nd Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

Jurisdiction and Venue

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

Facts

5. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

6. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

7. On or about March 2007, Plaintiff was working as acting Sergeant under the supervision of Lt. John Gruchacz. Several weeks later, I became aware that Lt. Gruchacz was discriminating and retaliating against Patrol Officer Kim Igleheart because of her sex and disabled condition and for opposing discrimination. Lt. Gruchacz instructed me to "get" Ms. Igleheart on anything I could. I told Lt. Gruchacz that I would not participate in retaliation against Ms. Igleheart.

8. On or about June 22, 2007, Plaintiff was interviewed by Defendant's EEO office concerning allegations of discrimination and retaliation against Ms. Igleheart by Lt. Gurchacz.

9. Thereafter, on or about, September 2007, Lt. Gurchacz, acting within the course and scope of his employment with Defendant, demoted Plaintiff by stripping Plaintiff of his "acting Sergeant" position.

10. Further, on or about March 18, 2008, Plaintiff reported to his immediate supervisor, Lt. Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

11. Such allegation was subsequently forwarded to Lt. Richard Griffin.

12. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

13. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

14. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

15. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

16. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

17. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

18. On August 6, 2008, Plaintiff appeared before the Advisory Action Board

regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

19. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008.

20. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

21. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

22. On November 25, 2008, Plaintiff submitted a response to Defendant's proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

23. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and

Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment.

24. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

25. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

26. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

Unlawful Retaliation

27. Incorporating the paragraphs above, Plaintiff alleges that Defendant retaliated against him (i) in violation of Tex. Labor Code §21.055 for Plaintiff's opposition of a discriminatory practice and his participation in an investigation, proceeding or hearing ; and (ii) in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for participating in protective activity by reporting a violation of law by another public employee to an appropriate law enforcement authority.

Damages

28. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

29. Plaintiff seeks all the remedies and relief authorized by Tex. Labor Code §21.2585, Tex. Labor Code §21.259, and Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses, emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

Exhaustion of Administrative Procedures

30. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court.

31. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

32. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

33. This suit was filed within the 30 days after exhaustion of March 17, 2009, the date when the appeal procedures were exhausted.

34. Further, on or about May 6, 2009, Plaintiff filed a complaint with the EEOC, with election that such complaint be filed with the Civil Rights Division of the Texas Workforce Commission, alleging that Defendant had unlawfully retaliated against him.

35. On or about July 30, 2009, the EEOC issued a decision with respect to Plaintiff's retaliation claim. Such decision was received by Plaintiff's counsel on or about August 2, 2009.

36. On or about August 24, 2009, the Texas Workforce Commission issued a Right to Sue notice. This suit is filed within two years of the accrual of the action and is timely. Therefore, Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to court.

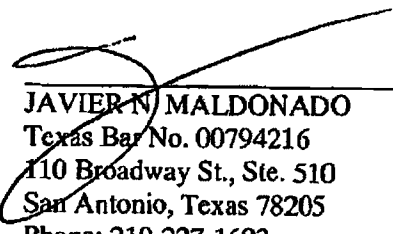
37. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

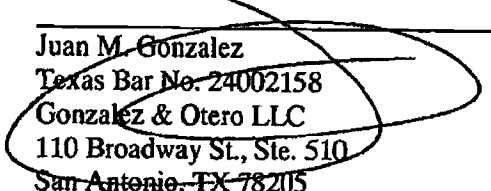
Prayer for Relief

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted,


JAVIER N. MALDONADO
Texas Bar No. 00794216
110 Broadway St., Ste. 510
San Antonio, Texas 78205
Phone: 210-227-1603
Facsimile: 210-225-3958


Juan M. Gonzalez
Texas Bar No. 24002158
Gonzalez & Otero LLC
110 Broadway St., Ste. 510
San Antonio, TX 78205
Phone: 210-587-4000
Fax: 210-587-4001

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on September 2 of 2009 to:

Deborah Lynne Klein
Office of the City Attorney
Litigation Division
111 Soledad St., 10th Fl.
San Antonio, TX 78205

_____ CM/RRR
_____ Facsimile (210-207-4357)
_____ Express Mail
_____ Hand Delivery
_____ First Class
_____ Email


JAVIER N. MALDONADO

FILED
DIS. DIST. CLERK
09 SEP -2 PM 3:32
BY *[Signature]*
CLERK

DEC-11-2009 10:15 From:

To: 2074357

Page: 2/5

Cause No. 2009-CI-06289 DEC 10 PM 2:41

RUSSELL D. MARTIN,
Plaintiff,

vs.

CITY OF SAN ANTONIO,
Defendant.

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

DEMAND FOR JURY AND MOTION TO SET ON JURY DOCKET

Plaintiff, Russell D. Martin, demands a jury trial and pays the jury fee herewith.
Motion is also made that the above numbered and entitled cause be set for trial on the
Jury Docket. The estimated length of trial is approximately four days.

Respectfully Submitted,

JAVIER N. MALDONADO

Texas Bar No. 00794216

110 Broadway St., Ste. 510

San Antonio, Texas 78205

Phone: 210-227-1603

Facsimile: 210-225-3958

Juan M. Gonzalez

Texas Bar No. 24002158

Gonzalez & Otero LLC

110 Broadway St., Ste. 510

San Antonio, TX 78205

Phone: 210-587-4000

Fax: 210-587-4001

ATTORNEYS FOR PLAINTIFF

DEC-11-2009 10:16 From:

To: 2074357

Page: 3/5

ORDER

The above styled and numbered cause is set for trial on the Jury Docket for the 7th day of September, 2010 at 8:30 a.m., in the 37th Monitoring Court, 100 Dolorosa, Bexar County, Texas, San Antonio. The ADR docket is set for May 5th, 2010 at 8:30 a.m. in the 57th Judicial District Court, 100 Dolorosa, Bexar County, Texas, San Antonio.

DEC 10 2009

Signed on this ____ day of December, 2009.

JUDGE PRESIDINGCERTIFICATE OF SERVICE

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on December 10, 2009 to:

Deborah Lynne Klein
Office of the City Attorney
Litigation Division
111 Soledad St., 10th Fl.
San Antonio, TX 78205

CM/RRR

Facsimile (210-207-4357)

Express Mail

Hand Delivery

First Class

Email

JAVIER N. MALDONADO

JAVIER N. MALDONADO



OFFICE OF CIVIL JURY ASSIGNMENT CLERK
BEXAR COUNTY COURTHOUSE--ROOM 422
SAN ANTONIO, TEXAS 78205
(210) 335-2529

March 31, 2010

NOTICE OF JURY TRIAL SETTING

RECEIVED
LITIGATION
APR 02 2010
CITY ATTORNEY'S OFFICE
SAN ANTONIO, TEXAS

115132

DEBORAH KLEIN
Attorney at Law
111 SOLEDAD ST 10TH
SAN ANTONIO, TX 78205-2230

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial ON THE MERITS on the 7th day of September, 2010 at 8:30 AM in the 37th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the 5th day of May, 2010 at 8:30 AM in the 57th District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

DAVID A BERCHELMANN
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN
JAVIER MALDONADO
JUAN GONZALEZ

IN THE DISTRICT COURT
408 JUDICIAL DISTRICT
DEKAR COUNTY, TEXAS

This case is appropriate for mediation pursuant to TEX. CIV. PRAC. & REM CODE 154.001, et seq. By agreement of the parties By appointment of the Court Joe Brown is appointed Mediator in the above case and all counsel are directed to contact Mediator to arrange the logistics of mediation within three (3) business days.

Fees for the mediation are to be divided and borne equally by the parties unless agreed otherwise, and shall be paid by the parties directly to the Mediator, and shall be taxed as costs. Each party and their counsel will be bound by the Rules for Mediation as adopted by the Civil District Judges in Special Order No. 30270, and shall complete the information forms as are furnished by the Mediator.

A violation of the Order shall be punished by contempt of Court, which is punishable by confinement in the County Jail for up to six (6) months and a fine of up to \$500.00.

SIGNED

May 5, 1910

JUDGE PRESIDING

Fax sent by :

05-19-10 06:04p Pg: 2/3

CAUSE NO. 2009C106289

RUSSELL D MARTIN

VS

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

406 JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

REPORT OF JUDICIAL APPOINTMENT AND APPROVAL OF PAYMENT FEE

On the MAY 05 day of 2010, Joe Brown, SEN _____,
was appointed as:

- ____ Guardian / Attorney ad litem to represent.
 ____ Attorney ad litem to represent respondent cited by publication.
☒ Mediator (conditionally pursuant to separate written order as per TEX. CIV. PRAC. & REM. CODE 154).
 Results of mediation conference:
 Settled _____
 Not Settled _____
 Date of Mediation _____
 ____ Auditor (172. TEX. R. CIV. P. 172).
 ____ Mental Health Professionals (pursuant to separate written order and per TRCP, Rule 167a and Rule 510, TEX. R. CIV. EVID.).
 ____ Receiver (pursuant to separate written order and per Texas Family Code 3.58/Rules 695 and 695a, TRCP).
 ____ Master in Chancery (pursuant to separate written order and per Rule 171, TRCP).
 ____ Referee in Juvenile Court (pursuant to Family Code, §1.04g).
 ____ Social Study Investigators.

FEE CHARGED BY APPOINTED:

\$ _____ PAID BY/BILLED TO _____
 \$ _____ PAID BY/BILLED TO _____
 \$ _____ PAID BY/BILLED TO _____

SIGNED AND SUBMITTED FOR COURT APPROVAL this _____ day of _____, _____.

APPOINTER

APPROVED AND ORDERED this _____ day of _____, _____.

JUDGE PRESIDING

Fax sent by :

05-19-10 06:04p Pg: 3/3

CAUSE NO: 2009CI06289 COURT: 406 DATE / TIME: 05/05/2010 08:30AM
STYLE: RUSSELL D MARTIN VS CITY OF SAN ANTONIO

SETTING COURT: 057

TRIAL DATE/TIME: 09/07/2010 08:30AM

ATTORNEY(S) FOR CASE:

	Office Nbr.	Fax Nbr.	
JAVIER MALDONADO	210-227-1603	210-225-3958	JUAN GONZALEZ
DEBORAH KLEIN	210-207-8919	210-207-4357	

Office Nbr.	Fax Nbr.
210-587-4000	210-587-4001

ADR DOCKET HEARING: _____
RESET DATE: _____
DATE FOR MEDIATION: NLT: 7/23/10
FEE ARRANGEMENT: split
MEDIATOR: Joe Brown
ACCPED - ORDERED

344-17228



OFFICE OF CIVIL JURY ASSIGNMENT CLERK
BEXAR COUNTY COURTHOUSE--ROOM 422
SAN ANTONIO, TEXAS 78205
(210) 335-2520

August 18, 2010

NOTICE OF JURY TRIAL SETTING

RECEIVED
LITIGATION

AUG 20 2010

CITY ATTORNEY'S OFFICE
SAN ANTONIO, TEXAS

DEBORAH KLEIN
Attorney at Law
PO BOX 839966 200
SAN ANTONIO, TX 78283-3966

005449

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial **ON THE MERITS** on the 7th day of September, 2010 at 8:30 AM in the 37th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the _____ in the _____ District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

DAVID A BERCHELMANN
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN
JAVIER MALDONADO
JUAN GONZALEZ

No. 2009CI06289

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORDER GRANTING AGREED MOTION FOR CONTINUANCE

On the ~~19~~ day of August, 2010, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for September 7, 2010 and reset for trial during the week of May 2, 2011.

SIGNED the ____ day of ~~AUG 19~~ 2010

David B. [Signature]

JUDGE MONITORING

AGREED:

Deborah Lynne Klein
SBN: 11556750
Office of the City Attorney
111 Soledad, 10th Floor
San Antonio, Texas 78205
Attorney for Defendant

Javier Maldonado
SBN: 00794216
Law Offices of Javier Maldonado
110 Broadway, Suite 510
San Antonio, Texas 78205
Attorney for Plaintiff

AUG-20-2010 11:59 From:Law Offices

2105874001

To:2102074357

Page:2/3

09/19/2010 10:29 2102074357

CITY ATTY LITIGATION

PAGE 02/03

No. 2009CI06289

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORDER GRANTING AGREED MOTION FOR CONTINUANCE

On the ____ day of August, 2010, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for September 7, 2010 and reset for trial during the week of May 2, 2011.

SIGNED the ____ day of _____, 2010

JUDGE MONITORING

AGREED:

Deborah Lynne Klein
SBN: 11556750
Office of the City Attorney
111 Soledad, 10th Floor
San Antonio, Texas 78205
Attorney for Defendant

Javier Maldonado
SBN: 00794216
Law Offices of Javier Maldonado
110 Broadway, Suite 510
San Antonio, Texas 78205
Attorney for Plaintiff



OFFICE OF CIVIL JURY ASSIGNMENT CLERK
BEXAR COUNTY COURTHOUSE-ROOM 422
SAN ANTONIO, TEXAS 78205
(210) 335-2520

December 1, 2010

NOTICE OF JURY TRIAL SETTING

DEBORAH KLEIN
Attorney at Law
PO BOX 839966 200
SAN ANTONIO, TX 78283-3966

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial **ON THE MERITS** on the 2nd day of May, 2011 at 8:30 AM in the 131st District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the _____ in the _____ District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

JOHN D. GABRIEL
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN
JAVIER MALDONADO
JUAN GONZALEZ

002111

No. 2009CI06289

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

AGREED MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendant City of San Antonio and Plaintiff Russell D. Martin, and file this, their Agreed Motion for Continuance and would show as follows:

This case is currently set for trial on May 2, 2011; however, additional discovery remains to be accomplished and extra time would allow for a possible mediation in this case. The parties hereby request a continuance until October 17, 2011. This continuance is not sought for delay, but so that justice may be done. Such continuance will not prejudice any party, and will allow the parties adequate time to explore additional settlement possibilities and adequately prepare for a trial on the merits.

WHEREFORE, PREMISES CONSIDERED, the parties respectfully request that this Honorable Court grant this Agreed Motion for Continuance and reset this case for trial on October 17, 2011.

BY _____

FILED
DISTRICT CLERK
BEXAR CO. TEXAS
11 APR -6 AM 9:46
DEPUTY

Respectfully submitted,

Office of the City Attorney
Litigation Division
111 Soledad St., 10th Floor
San Antonio, TX 78205



~~Deborah Lynne Klein~~

Attorney IV

SBN: 11556750

(210) 207-8919 / (210) 207-4357 FAX

Attorney for Defendant

Javier Maldonado

SBN: 00794216

Law Offices of Javier Maldonado

110 Broadway, Suite 510

San Antonio, Texas 78205

(210) 227-1603 / (210) 225-3958 Fax

Attorney for Plaintiff

APR-06-2011 09:07 From: MALDONADO

2105874001

To: 2074357

Page: 3/7

04/06/2021 08:01 2102074357

CITY ATTY LITIGATION

PAGE 03/07

Respectfully submitted,

Office of the City Attorney
Litigation Division
111 Soledad St. 10th Floor
San Antonio, TX 78205



~~Deborah L. Klein~~

Attorney IV

SBN: 11556750

(210) 207-8919 / (210) 207-4357 FAX

Attorney for Defendant



Javier Maldonado

SBN: 00794216

Law Offices of Javier Maldonado

110 Broadway, Suite 510

San Antonio, Texas 78205

(210) 227-1603 / (210) 225-3958 Fax

Attorney for Plaintiff

No. 2009CI06289

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORDER GRANTING AGREED MOTION FOR CONTINUANCE

On the APR 06 2011 day of April, 2011, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

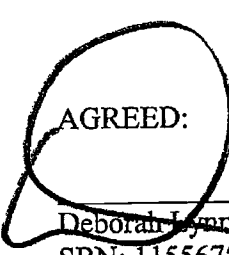
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for May 2, 2011 and reset for trial during the week of October 17, 2011.

SIGNED the ____ day of APR 06 2011, 2011

JOHN D. GABRIEL

JUDGE MONITORING

AGREED:


Deborah Lyne Klein
SBN: 11556750
Office of the City Attorney
111 Soledad, 10th Floor
San Antonio, Texas 78205
Attorney for Defendant

Javier Maldonado
SBN: 00794216
Law Offices of Javier Maldonado
110 Broadway, Suite 510
San Antonio, Texas 78205
Attorney for Plaintiff

APR-06-2011 09:07 From: MALDONADO

2105874001

To: 2074357

Page: 4/7

04/06/2021 08:01 2102074357

CITY ATTY LITIGATION

PAGE 04/07

No. 2009CI06289

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

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IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORDER GRANTING AGREED MOTION FOR CONTINUANCE

On the ____ day of April, 2011, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for May 2, 2011 and reset for trial during the week of October 17, 2011.

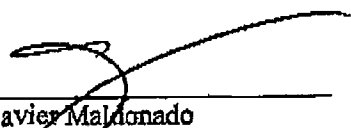
SIGNED the ____ day of _____, 2011.



AGREED:

Deborah Lynn Klein
SBN: 11556750
Office of the City Attorney
111 Soledad, 10th Floor
San Antonio, Texas 78205
Attorney for Defendant

JUDGE MONITORING



Javier Maldonado
SBN: 08794216
Law Offices of Javier Maldonado
110 Broadway, Suite 510
San Antonio, Texas 78205
Attorney for Plaintiff



OFFICE OF CIVIL JURY ASSIGNMENT CLERK
BEXAR COUNTY COURTHOUSE-ROOM 422
SAN ANTONIO, TEXAS 78205
(210) 335-2520

May 2, 2011

NOTICE OF JURY TRIAL SETTING

006067
RECEIVED
LITIGATION

MAY 06 2011

CITY ATTORNEY'S OFFICE
SAN ANTONIO, TEXAS

DEBORAH KLEIN
Attorney at Law
111 SOLEDAD 10TH FLOOR
SAN ANTONIO, TX 78205

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial **ON THE MERITS** on the 17th day of October, 2011 at 8:30 AM in the 150th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the _____ in the _____ District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

JANET LITTLEJOHN

JURY MONITORING JUDGE

CC:

DEBORAH KLEIN
JAVIER MALDONADO
JUAN GONZALEZ

FILED No. 2009CI06289
DISTRICT CLERK
BEXAR CO. TEXAS

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

2011 JUN 22 P 2:27
DEPUTY

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

BY: _____
NOTICE OF APPEARANCE OF COUNSEL

Defendant **CITY OF SAN ANTONIO** hereby gives notice that Shawn Fitzpatrick of FITZPATRICK & KOSANOVICH, P.C., has entered his appearance as one of the attorneys of record for Defendant City of San Antonio.

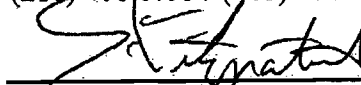
Respectfully submitted,

FITZPATRICK & KOSANOVICH, P.C.

P.O. Box 831121

San Antonio, Texas 78283-1121

(210) 408-6793 / (210) 408-6797 FAX



SHAWN FITZPATRICK

SBN: 00787474

Attorney for Defendant City of San Antonio

---and---

CITY OF SAN ANTONIO

Michael D. Bernard, City Attorney

SBN: 02211310

Office of the City Attorney

Litigation Division

111 Soledad St., 10th Floor

San Antonio, Texas 78205

(210) 207-8789 / (210) 207-4357 FAX



DEBORAH LYNNE KLEIN

Assistant City Attorney

SBN: 11556750

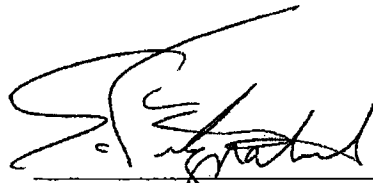
Attorney for Defendant City of San Antonio

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following via facsimile on June 22, 2011:

Javier Maldonado
Law Offices of Javier Maldonado
110 Broadway, Suite 510
San Antonio, Texas 78205

Juan M. Gonzalez
Gonzalez & Otero, LLC
110 Broadway St., Suite 510
San Antonio, Texas 78205


SHAWN FITZPATRICK

RUSSELL D. MARTIN,
Plaintiff,

vs.

CITY OF SAN ANTONIO,
Defendant.

FILED
Cause No. 2009-01-06289
BEXAR CO. TEXAS

2011 SEP 19 P 4: 21

DEPUTY

BY: _____

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

NOW COMES RUSSELL D. MARTIN, and files this his Second Amended Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

Parties

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2nd Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

Jurisdiction and Venue

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

Facts

5. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

6. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

7. On or about March 2007, Plaintiff was working as acting Sergeant under the supervision of Lt. John Gruchacz. Several weeks later, I became aware that Lt. Gruchacz was discriminating and retaliating against Patrol Officer Kim Igleheart because of her sex and disabled condition and for opposing discrimination. Lt. Gruchacz instructed me to "get" Ms. Igleheart on anything I could. I told Lt. Gruchacz that I would not participate in retaliation against Ms. Igleheart.

8. On or about June 22, 2007, Plaintiff was interviewed by Defendant's EEO office concerning allegations of discrimination and retaliation against Ms. Igleheart by Lt. Gruchacz.

9. Thereafter, on or about, September 2007, Lt. Gurchacz, acting within the course and scope of his employment with Defendant, demoted Plaintiff by stripping Plaintiff of his "acting Sergeant" position.

10. Further, on or about March 18, 2008, Plaintiff reported to his immediate supervisor, Lt. Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

11. Such allegation was subsequently forwarded to Lt. Richard Griffin.

12. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

13. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

14. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

15. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

16. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

17. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

18. On August 6, 2008, Plaintiff appeared before the Advisory Action Board

regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

19. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008. Prior to this meeting, Defendant had not provided any notice to Plaintiff that it was seeking disciplinary action against him related to the comments alleged to have been made on June 18, 2008.

20. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

21. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

22. On November 25, 2008, Plaintiff submitted a response to Defendant's

proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

23. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment. Defendant terminated Plaintiff's employment purportedly because of the email on March 1, 2008 and the comments allegedly made by Plaintiff on June 18, 2008. To Plaintiff's knowledge, Defendant never conducted an investigation into the alleged June 18, 2008 comments.

24. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

25. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

26. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

Unlawful Retaliation

27. Incorporating paragraphs 1-26 above, Plaintiff alleges that Defendant retaliated against him (i) in violation of Tex. Labor Code §21.055 for Plaintiff's opposition of a discriminatory practice and his participation in an investigation,

proceeding or hearing ; and (ii) in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for participating in protective activity by reporting a violation of law by another public employee to an appropriate law enforcement authority.

Due Process Violations

28. Incorporating paragraphs 1-26 above, Plaintiff alleges that Defendant subjected him, or caused him to be subjected, to the deprivation of a constitutional right by terminating his employment without due process in violation of 42 U.S.C. § 1983. Defendant violated Plaintiff's minimal due process to which he was entitled under the Fourteenth Amendment of the United States Constitution. Specifically, Defendant was required by applicable law and governing procedures to conduct an investigation into the comments allegedly made by Plaintiff on June 18, 2008 if those comments were intended to be used by Defendant to terminate Plaintiff's employment. Defendant did not conduct any investigation into the comments prior to terminating his employment. Additionally, Defendant denied Plaintiff any sort of a *Loudermill* hearing prior to the discharge of Plaintiff's employment. Defendant's actions deprived Plaintiff of his constitutionally protected property interest in his employment.

Damages

29. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

30. Plaintiff seeks all the remedies and relief authorized by Tex. Labor Code §21.2585, Tex. Labor Code §21.259, and Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses,

emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

Exhaustion of Administrative Procedures

31. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court.

32. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

33. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

34. This suit was filed within the 30 days after exhaustion of March 17, 2009, the date when the appeal procedures were exhausted.

35. Further, on or about May 6, 2009, Plaintiff filed a complaint with the EEOC, with election that such complaint be filed with the Civil Rights Division of the Texas Workforce Commission, alleging that Defendant had unlawfully retaliated against him.

36. On or about July 30, 2009, the EEOC issued a decision with respect to Plaintiff's retaliation claim. Such decision was received by Plaintiff's counsel on or about August 2, 2009.

37. On or about August 24, 2009, the Texas Workforce Commission issued a Right to Sue notice. This suit is filed within two years of the accrual of the action and is timely. Therefore, Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to court.

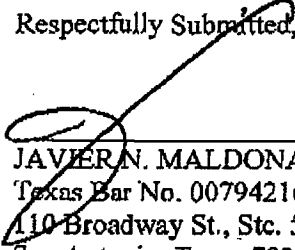
38. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

Prayer for Relief

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted,


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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on September ____ of 2009 to:

Deborah Lynne Klein
Office of the City Attorney
Litigation Division
111 Soledad St., 10th Fl.
San Antonio, TX 78205

____ CM/RRR
____ Facsimile (210-207-4357)
____ Express Mail
____ Hand Delivery
____ First Class
____ Email


JAVIER N. MALDONADO